

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	CASE NO. 23-34815
GALLERIA 2425 OWNER, LLC,	§	
	§	CHAPTER 11
DEBTOR	§	

**RESPONSE TO TRUSTEE’S OMNIBUS OBJECTION TO
CLAIM NOS. 23 AND 24 OF JETALL CAPITAL, LLC AS TO CLAIM NO. 23
(TENANT IMPROVEMENT ALLOWANCE)
[DOCKET NO. 404]**

Jetall Capital, LLC (“Jetall”) respectfully responds in opposition to “Trustee’s Omnibus Objection to Claim Nos. 23 and 24 of Jetall Capital, LLC” filed on June 3, 2024 (Docket No. 404) (the “Objection to Claim Nos. 23 & 24”) as to Claim No. 23.

1. **Jetall Capital, LLC’s Claim Nos. 23 and 24.** Jetall Capital, LLC timely filed its proof of claims on April 9, 2024 in the general unsecured amount of \$1,699,750.00 for the balance due on Tenant Improvement Allowance on the Third Amended Lease Agreement (Claim No. 23) and for \$1,699,750.00 for reimbursement of payroll advances and other expenses of Debtor, and for unpaid lease commissions and management fees pursuant to the Management Leasing Agreement (Claim No. 24).

2. **Trustee’s Objection.** The Chapter 11 Trustee, Christopher R. Murray, filed his objection on June 3, 2024 (Docket No. 404). In the objection, the Trustee seeks an order disallowing Claim No. 23 in its entirety.

3. **Claim No. 23 is Distinct From Claim 24.** The Trustee objects to the two (2) proofs of claim filed by Jetall through one objection to claim. Jetall’s responses are filed separately because both these proofs of claim have a separate basis, and involve separate issues and separate

evidence for support. Claim No. 23 involves the Tenant Improvement Allowance which is disputed by the Trustee in the adversary styled *Murray v. Jetall Companies, Inc.*, Adversary No. 24-03117 (Bankr. S.D. Tex). Claim No. 24 involves cash advances which Jetall made by wire transfer and bank transfer to pay payroll and other expenses, and for unpaid lease commissions and management fees pursuant to the Management Leasing Agreement in the amount of at least \$1,699,750.00 which needed to be paid for Debtor to operate, and for which Debtor had insufficient funds.

4. **Motion to Consolidate Objection to Claim No. 23 with Adversary No. 24-03120.** The adversary proceeding styled *Murray v. Jetall Companies, Inc.*, Adversary No. 24-03117 (Bankr. S.D. Tex.) includes all of the issues raised by the Trustee in the Objection to Claim No. 23. Therefore, adversary notices should be issued, adversary procedures should be followed, and this objection to proof of claim should be consolidated with adversary no. 24-03117.

5. **Burden of Proof.** The Proof of Claim includes all documents and information required by Bankruptcy Rule 3001(c), and in all respects complies with Bankruptcy Rule 3001 and Official Form for proof of claims. Accordingly, Jetall Capital, LLC's proof of claim constitutes *prima facie* evidence of the validity and the amount of Jetall Capital, LLC's claim. Fed. R. Bankr. P. 3001(f).

6. The burden of proof on the proof of claim is:

Properly filing a proof of claim constitutes *prima facie* evidence of the claim's validity and amount. Rule 3001(f). If the Trustee objects, it is his burden to present enough evidence to overcome the *prima facie* effect of the claim. If the Trustee succeeds, the creditor must prove the validity of the claim.

McGee v. O'Connor (In re O'Conner), 153 F.3d 258, 260 (5th Cir. 1998).

7. **Merits of Claim.** Jetall's position is that, it is owed the balance due on the Tenant Improvement Allowance in the Third Amended Lease Agreement executed in August, 2022.

8. **Effect of Chapter 11 Plan.** The Chapter 11 plan has no binding, collateral estoppel, or *res judicata* effect on this proof of claim or the Trustee's objection. The Trustee may argue that this Court's plan confirmation order entered June 22, 2024 (Docket No. 566), renders the proof of claim moot. However, as a matter of law, that is incorrect. Both *res judicata* and collateral estoppel require that an order be a "final order". NBK's plan is neither effective nor substantially consummated on its own terms. This Court's confirmation order is not a final order as it remains subject to appeal. 2425 WL, LLC intends to file a notice of appeal and prosecute the appeal pursuant to 28 U.S.C.

WEREFORE, PREMISES CONSIDERED, Jetall Capital, LLC respectfully prays that with respect to Proof of Claim No. 23 this Court:

- (a) Deny the Trustee's Objection to Claim as to Claim No. 23;
- (b) Allow Jetall Capital, LLC's general unsecured claim in the amount due under the Tenant Improvement Allowance in the Third Amended Lease Agreement; or
- (c) Alternately, consolidate this objection to claim with Adversary Proceeding No. 24-03117; and
- (d) Grant Jetall Capital, LLC such other and further relief, in equity or at law, to which it shows itself justly entitled.

Dated: July 3, 2024

Respectfully submitted,

/s/ H. Gray Burks, IV
H. Gray Burks, IV
State Bar No. 03418320
BurksBaker, PLLC
950 Echo Ln, Suite 300
Houston, TX 77024
Telephone: (713) 897-1297
Facsimile: (713) 869-9100
Email: gray.burks@burksbaker.net

Attorneys for Jetall Captial, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response has been served on the parties listed below, via electronic delivery through the Court's CM/ECF system or by deposit in the United States Mail, first class postage prepaid on July 3, 2024.

U.S. Mail

Galleria 2425 Owner, LLC
1001 West Loop South 700
Houston, TX 77027
Debtor

ECF/CM

Reese W Baker
Baker & Associates
950 Echo Lane
Suite 300
Houston, TX 77024
Attorney for Debtor

ECF/CM

James Q. Pope
The Pope Law Firm
6161 Savoy Drive
Ste 1125
Houston, TX 77036
Attorney for Debtor

ECF/CM

Jeffrey W Steidley
Steidley Law Firm
3000 Wesleyan
Ste 200
Houston, TX 77027
Attorney for Debtor

ECF/CM

Christopher R Murray
Jones Murray LLP
602 Sawyer St
Ste 400
Houston, TX 77007
Chapter 11 Trustee

ECF/CM

Kyung Shik Lee
Kyung S. Lee PLLC
4723 Oakshire Drive
Apt. B
Houston, TX 770027
Attorney for Chapter 11 Trustee

ECF/CM

R.J. Shannon
Shannon & Lee LLP
2100 Travis Street, Ste 1525
Houston, TX 77002
Attorney for Chapter 11 Trustee

ECF/CM

US Trustee
Office of the US Trustee
515 Rusk Ave Ste 3516
Houston, TX 77002
U.S. Trustee

/s/ H. Gray Burks, IV
H. Gray Burks, IV